

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TOLAN DUNCAN, #265027,

Plaintiff,

Civil Case No. 15-10412
Honorable Linda V. Parker

v.

CORIZON HEALTH, INC., et al.,

Defendants.

/

OPINION AND ORDER DISMISSING PLAINTIFF'S COMPLAINT (ECF NO. 1) PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 41(a)(2) AND DENYING DEFENDANTS MOTION FOR SUMMARY JUDGMENT (ECF NO. 32) AND MOTION FOR JUDGMENT ON THE PLEADINGS AS MOOT (ECF NO. 39)

Plaintiff filed this civil rights lawsuit on January 29, 2015 against Defendants Corizon Health, Inc., Badawi Abdellatif and Patrick Geml (collectively “Corizon Defendants”) and Defendant Dr. Timothy Kangas. (ECF No. 1.) On December 8, 2015, Defendant Kangas filed a motion for summary judgment. (ECF No. 32.) Plaintiff filed a response on December 22, 2015 and Defendant Kangas filed a reply on January 5, 2016. (ECF Nos. 34, 37.) Plaintiff then filed a sur-reply without leave of court. (ECF No. 41.)

On January 15, 2016, Corizon Defendants filed a motion for judgment on the pleadings. (ECF Nos. 39, 40.) Plaintiff filed a response to the motion on

February 16, 2016 and Corizon Defendants filed a reply on February 22, 2016. (ECF Nos. 42, 43.) Plaintiff filed another sur-reply without leave of the court on March 8, 2016. (ECF No. 44.)

Magistrate Judge Stephanie Dawkins Davis filed a Report and Recommendation (“R&R”) on August 17, 2016. (ECF No. 45.) Magistrate Judge Dawkins recommended that Defendant Kangas’s motion for summary judgment be granted and Corizon Defendants’ motion for judgment on the pleadings be granted.

Subsequent to Magistrate Judge Davis’s issuance of the R&R, the Court received a letter from Plaintiff, signed and dated August 30, 2016, requesting the Court to dismiss the lawsuit. (ECF No. 46.) Corizon Defendants filed a letter on September 7, 2016, stating they do not oppose Plaintiff’s request to voluntarily dismiss the suit. (ECF No. 47.)

The Court construes Plaintiff’s communication as a request to voluntarily dismiss his lawsuit pursuant to Federal Rule of Civil Procedure 41(a)(2).

Rule 41(a)(2) requires a plaintiff to seek an order of the court or stipulation of the opposing party to voluntarily dismiss an action where, as is the case here, the opposing party has filed an answer or motion for summary judgment. Fed. R. Civ. P. 41(a)(2). The court may grant the request for voluntary dismissal “on terms that the court considers proper.” *Id.* The decision whether to dismiss a complaint under Rule 41(a)(2) lies within the sound discretion of the court. *Grover by*

Grover v. Eli Lilly & Co., 33 F.3d 716, 718 (6th Cir. 1994) (citing *Banque de Depots v. Nat'l Bank of Detroit*, 491 F.2d 753, 757 (6th Cir. 1974)). In the context of Rule 41(a)(2), an “abuse of discretion is found only where the defendant would suffer ‘plain legal prejudice’ as a result of a dismissal without prejudice.” *Bridgeport Music, Inc. v. Universal-MCA Music Publ’g, Inc.*, 583 F.3d 948, 953 (6th Cir. 2009) (citation omitted). When deciding whether the defendant will suffer “plain legal prejudice,” the Sixth Circuit has instructed courts to consider such factors as “the defendant’s effort and expense of preparation for trial, excessive delay and lack of diligence on the part of the plaintiff in prosecuting the action, insufficient explanation for the need to take a dismissal, and whether a motion for summary judgment has been filed by the defendant.” *Grover*, 33 F.3d at 718 (citation omitted).

Applying those factors here leads the Court to conclude that dismissal is appropriate. Defendant Kangas filed a motion for summary judgment (ECF No. 32.) and Corizon Defendants do not oppose Plaintiff’s request. (ECF No. 47.) Plaintiff’s desire to no longer challenge Defendants’ alleged violations of his constitutional rights is not an insufficient explanation for seeking a dismissal. The motion for summary judgment is denied as moot.

Accordingly,

IT IS ORDERED, that Plaintiff's request to voluntarily dismiss this lawsuit (ECF No. 46) is **GRANTED** under Federal Rule of Civil Procedure 41(a)(2) and his Complaint (ECF No. 1) is **DISMISSED** without prejudice under Federal Rule of Procedure 41(a)(2). The motion for summary judgment (ECF No. 32) and motion for judgment on the pleadings (ECF No. 39) are **DENIED** as **MOOT**.

s/ Linda V. Parker
LINDA V. PARKER
U.S. DISTRICT JUDGE

Dated: September 13, 2016

I hereby certify that a copy of the foregoing document was mailed to counsel of record and/or pro se parties on this date, September 13, 2016, by electronic and/or U.S. First Class mail.

s/ Richard Loury
Case Manager